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EXPLANATION	AMOUNT
SN. 10/687,560	

55-138/212

232

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File No. PETRA 3.0-032
Serial No. 10/687,560
Filed: 10/16/03
Inventor/Mark: TEPPER et al.

The U.S. Patent & Trademark Office/U.S. Copyright Office acknowledges and has stamped hereon the date of receipt of the items checked below:

- () AFFIDAVIT/DECLARATION
- (X) AMENDMENT/RESPONSE
- () AMEND/RESP TRANSMITTAL FORM
- () APPLICATION - PATENT/TRADEMARK
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- () ASSIGNMENT AND COVER SHEET
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- (X) CHECK - NO. 232 \$ 60.00
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APR 18 2005

MAIL STOP FEE AMENDMENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Our File: PETAA 30-032

Group Art Unit:

Applicant: TEPPER et al.

Serial No.: 10/687,560

Examiner:

Filed: 10/16/03

For: PETCHEWS WITH FILLED

Batch No.:

Dear Sir: ACCEPTABLES AND METHOD OF MAKING SAME

Enclosed for filing in the United States Patent and Trademark Office is the following:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Law Firm Transmittal Letter +copy | <input type="checkbox"/> Letter/Official Draftsmen |
| <input checked="" type="checkbox"/> Response/Amendment | <input type="checkbox"/> Petition |
| <input type="checkbox"/> Affidavit/Declaration | <input type="checkbox"/> Request for Ext. of Time |
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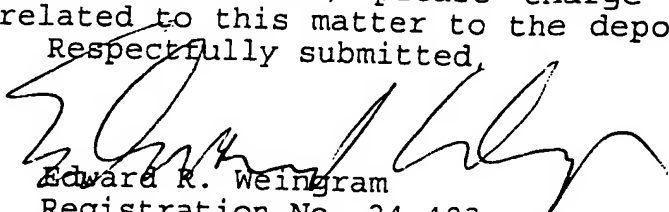
Conditional Petition and Fee for Extension of Time: If any extension of time for the accompanying response is required, applicant requests that this be considered a petition therefor.

In connection with the above-identified matter, please charge any additional fees or any other charges related to this matter to the deposit account of the writer, No. 23-0812.

Respectfully submitted,

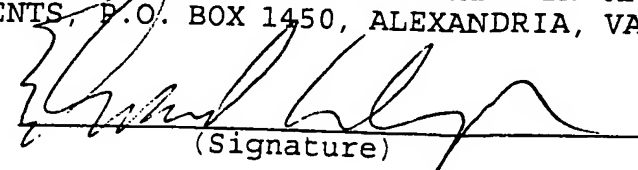
Enclosures

DATED: 4-18-05


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Practitioner's Docket No. PETRA 3.0-032

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: JACOB TEPPER et al.
Application No.: 0 10/687,560 Group No.: 1761
Filed: Oct. 16, 2003 Examiner: Steven L. Weinstein
For: PET CHEWS WITH FILLED RECEPTACLES
AND METHOD OF MAKING SAME

**Assistant Commissioner for Patents
Washington, D.C. 20231**

AMENDMENT TRANSMITTAL

1. Transmitted herewith is an amendment for this application.

STATUS

2. Applicant is
- ☒ a small entity. A statement:
 - ☐ is attached.
 - ☐ was already filed.
 - ☐ other than a small entity.

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. § 1.8(a))

I hereby certify that this correspondence is, on the date shown below, being:

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☒ deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

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Signature

Edward R. Weingram
(type or print name of person certifying)

(Amendment Transmittal [9-19]—page 1 of 4)

EXTENSION OF TERM

NOTE: "Extension of Time in Patent Cases (Supplement Amendments) — If a timely and complete response has been filed after a Non-Final Office Action, an extension of time is not required to permit filing and/or entry of an additional amendment after expiration of the shortened statutory period.

If a timely response has been filed after a Final Office Action, an extension of time is required to permit filing and/or entry of a Notice of Appeal or filing and/or entry of an additional amendment after expiration of the shortened statutory period unless the timely-filed response placed the application in condition for allowance. Of course, if a Notice of Appeal has been filed within the shortened statutory period, the period has ceased to run." Notice of December 10, 1985 (1061 O.G. 34-35).

NOTE: See 37 C.F.R. § 1.645 for extensions of time in interference proceedings, and 37 C.F.R. § 1.550(c) for extensions of time in reexamination proceedings.

3. The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

(complete (a) or (b), as applicable)

(a) ☒ Applicant petitions for an extension of time under 37 C.F.R. § 1.136 (fees: 37 C.F.R. § 1.17(a)(1)-(4) for the total number of months checked below:

Extension (months)	Fee for other than small entity	Fee for small entity
<input checked="" type="checkbox"/> one month	\$ 110.00	\$ 55.00 60.00
<input type="checkbox"/> two months	\$ 390.00	\$ 195.00
<input type="checkbox"/> three months	\$ 890.00	\$ 445.00
<input type="checkbox"/> four months	\$ 1,390.00	\$ 695.00

Fee: \$ 60.00

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

☐ An extension for _____ months has already been secured. The fee paid therefor of \$ _____ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ 60.00

OR

(b) ☐ Applicant believes that no extension of term is required. However, this is a conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition for extension of time.

(Amendment Transmittal [9-19]—page 2 of 4)

FEE FOR CLAIMS

4. The fee for claims (37 C.F.R. § 1.16(b)-(d)) has been calculated as shown below:

(Col. 1)	(Col. 2)	(Col. 3)	SMALL ENTITY	OTHER THAN A SMALL ENTITY	
CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NO PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE	ADDIT. FEE OR RATE	ADDIT. FEE
TOTAL	MINUS	**	=	x\$9 = \$	x\$18 = \$
INDEP.	MINUS	***	=	x\$40 = \$	x\$80 = \$
<input type="checkbox"/> FIRST PRESENTATION OF MULTIPLE DEP. CLAIM			+ \$135 = \$	+ \$270 = \$	
			TOTAL ADDIT. FEE \$	OR TOTAL ADDIT. FEE \$	

- * If the entry in Col. 1 is less than entry in Col. 2, write "0" in Col. 3.
 ** If the "Highest No. Previously Paid for" IN THIS SPACE is less than 20, enter "20".
 *** If the "Highest No. Previously Paid For" IN THIS SPACE is less than 3, enter "3".
 The "Highest No. Previously Paid For" (Total or indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

WARNING: "After final rejection or action (§ 1.113) amendments may be made cancelling claims or complying with any requirement of form which has been made." 37 C.F.R. § 1.116(a) (emphasis added).

(complete (c) or (d), as applicable)

- (c) ☒ No additional fee for claims is required.

OR

- (d) ☐ Total additional fee for claims required \$ -0-

FEE PAYMENT

- ☒ Attached is a ☒ check ☐ money order in the amount of \$ 60.00
☐ Authorization is hereby made to charge the amount of \$ _____
☐ to Deposit Account No. _____
☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.

WARNING: Credit card information should not be included on this form as it may become public.

- ☐ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

NOTE: If there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum, six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to charge the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, (1065 O.G. 31-33).

6. ☒ If any additional extension and/or fee is required, charge Account
No. 23-0812

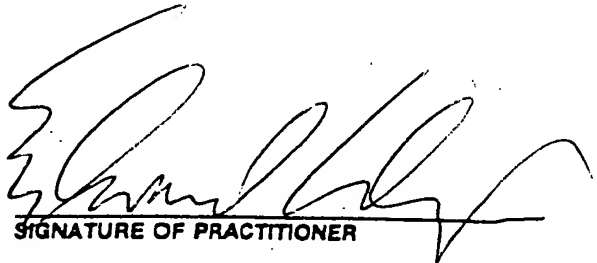
AND/OR

- ☒ If any additional fee for claims is required, charge Account
No. 23-0812

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SIGNATURE OF PRACTITIONER

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(Amendment Transmittal [9-19]—page 4 of 4)



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Jacob Tepper, et al.
Serial No.: 10/687,560
Filed: October 16, 2003
For: PET CHEWS WITH FILLED RECEPTACLES
 AND METHOD OF MAKING SAME

Examiner: Steven L. Weinstein
Group Art Unit: 1761

Mail Stop Fee Amendments
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT IN RESPONSE TO FIRST OFFICE ACTION

Sir:

In response to the first Office Action dated January 4, 2005, please consider the following claim amendments and remarks.

Complete List of All Claims in the Application

We claim:

1. (Currently amended) A fully-consumable pet chew comprising
a formed, three-dimensional body of chewable material,
said body having an outer surface and at least one recess extending generally perpendicularly
from said outer surface,
said recess having walls and a machined edge at said outer surface,
said recess defining a receptacle within said body,
a filling comprising an edible substance fixedly positioned in said receptacle.
2. (Previously presented) The pet chew of claim 1 wherein said machined edge at said
outer surface is formed by machining operations selected from the group consisting of drilling,
punching, cutting and stamping.
3. (Previously presented) The pet chew of claim 1 wherein the walls of said recess are
scored during machining operations.
4. (Previously presented) The pet chew of claim 1 wherein said receptacle is a cylindrical
bore.
5. (Previously presented) The pet chew of claim 1 wherein said receptacle is a three
dimensional cavity of a desired size and configuration.
6. (Previously presented) The pet chew of claim 1 wherein said receptacle extends only
partially through said body.
7. (Previously presented) The pet chew of claim 1 wherein said chewable material is
selected from the group consisting of natural rawhide, ground and recombined rawhide, starch,
casein, denatured and partially hydrolyzed collagen, thermoplastic material, non-toxic plastic, and
mixtures thereof.
8. (Previously presented) The pet chew of claim 1 wherein said filling is selected from the
group consisting of rawhide, poultry, meat, pork, jerky, a meat by-product mixture, cereal, rice,

vegetable, fruit, cheese, pet food, peanut butter, and mixtures thereof and binders therefor.

9. (Previously presented) The pet chew of claim 1 wherein said filling is formed from whole pieces of an edible substance.

10. (Previously presented) The pet chew of claim 1 wherein said filling is formed from discrete particles of an edible substance.

11. (Previously presented) The pet chew of claim 1 wherein said filling comprises a processed mass.

12. (Previously presented) The pet chew of claim 1 wherein said filling is substantially level with the outer surface of said body.

13. (Previously presented) The pet chew of claim 1 wherein said filling extends outwardly from said receptacle.

14. (Previously presented) The pet chew of claim 1 wherein at least one of said chewable material and said filling is flavored with a flavoring agent.

15. (Previously presented) The pet chew of claim 1 wherein at least one of said chewable material and said filling is colored with a colorant.

16. (Previously presented) The pet chew of claim 1 wherein at least one of said chewable material and said filling is scented.

17. (Previously presented) The pet chew of claim 1 wherein at least one of said chewable material and said filling further contains at least one additional ingredient selected from the group comprising nutrients, dental additives, pharmaceutical compounds and mixtures thereof.

18. (Previously presented) The pet chew of claim 17 wherein said nutrients are selected from the group consisting of vitamins, minerals, herbs, anti-oxidants, and nutritional supplements.

19. (Previously presented) The pet chew of claim 17 wherein said pharmaceutical compounds are selected from the group consisting of anti-inflammatory agents, antibiotics, anti-parasitic agents, and animal-coat enhancing compounds.

20. (Previously presented) The pet chew of claim 1 wherein said receptacle and said filling

are sized and configured so that said filling is retained in said receptacle by friction fit.

21. (Previously presented) The pet chew of claim 1 wherein said filling is pre-formed and pressed into said receptacle.

22. (Currently amended) A method of making a fully-consumable pet chew, comprising the steps of:

- a. forming an edible, chewable material into a three dimensional body;
- b. removing a portion of said body to form at least one recess having walls and defining a receptacle in said body;
- c. forming an edible filling; and
- d. fixedly positioning said filling in said receptacle.

23. (Previously presented) The method of claim 22 wherein step b. includes the step of scoring the walls of said recess during machining operations.

24. (Previously presented) The method of claim 22 wherein said receptacle is a cylindrical bore.

25. (Previously presented) The method of claim 22 wherein said receptacle is a three dimensional cavity of a desired size and configuration.

26. (Previously presented) The method of claim 22 wherein said receptacle extends only partially through said body.

27. (Previously presented) The method of claim 22 wherein said chewable material is selected from the group consisting of natural rawhide, ground and recombined rawhide, starch, casein, denatured and partially hydrolyzed collagen, thermoplastic material, non-toxic plastic, and mixtures thereof.

28. (Previously presented) The method of claim 22 wherein said filling is selected from the group consisting of rawhide, poultry, meat, pork, jerky, a meat by-product mixture, cereal, rice, vegetable, fruit, cheese, pet food, peanut butter, and mixtures thereof and binders therefor.

29. (Previously presented) The method of claim 22 wherein said filling is formed from

whole pieces of an edible substance.

30. (Previously presented) The method of claim 22 wherein said filling is formed from discrete particles of an edible substance.

31. (Previously presented) The method of claim 22 wherein said filling comprises a processed mass.

32. (Previously presented) The method of claim 22 wherein at least one of said chewable material and said filling is flavored with a flavoring agent.

33. (Previously presented) The method of claim 22 wherein at least one of said chewable material and said filling is colored with a colorant.

34. (Previously presented) The method of claim 22 wherein at least one of said chewable material and said filling is scented.

35. (Previously presented) The method of claim 22 wherein at least one of said chewable material and said filling further contains at least one additional ingredient selected from the group comprising nutrients, dental additives, pharmaceutical compounds and mixtures thereof.

36. (Previously presented) The method of claim 35 wherein said nutrients are selected from the group consisting of vitamins, minerals, herbs, anti-oxidants, and nutritional supplements.

37. (Previously presented) The method of claim 35 wherein said pharmaceutical compounds are selected from the group consisting of anti-inflammatory agents, antibiotics, anti-parasitic agents, and animal-coat enhancing compounds.

38. (Previously presented) The method of claim 22 wherein said filling is pre-formed and pressed into said receptacle.

39. (Previously presented) The method of claim 22 wherein said filling is fixedly positioned in said receptacle by means of friction fit.

40. (Previously presented) The method of claim 22 wherein said filling is fixedly positioned in said receptacle by means of edible glue.

41. (Previously presented) The method of claim 22 wherein said filling is fixedly

positioned in said receptacle by means of a removable covering.

42. (Previously presented) The method of claim 22 wherein said filling is fixedly positioned in said receptacle by sealing said filling in said receptacle by means of a thermosetting edible compound.

43. (Previously presented) The method of claim 22 wherein said filling comprises slices of meat and steps c. and d. comprise twisting said slices of meat and forcing said twisted slices into said receptacle so that said twisted slices conform to the size and configuration of said receptacle and are retained in position therein.

44. (Previously presented) The method of claim 22 including, after step d., an additional step of shaping the top surface of the filling to the desired configuration.

45. (Previously presented) The method of claim 22 including, after step d., an additional step of drying and sterilizing said pet chew by exposing said filled pet chew to a suitable temperature for a sufficient time to effect drying and sterilizing.

46. (Previously presented) The method of claim 45 including, after said drying and sterilizing step, the step of wrapping said filled pet chew to prevent oxidation.

REMARKS

Claims 1-46 remain pending in the application. Claims 1 and 22 have been amended to add language to distinguish the fully-consumable pet chew of the invention from the non-edible pet toy of Markham '061 which includes edible treats.

Claims 1, 2, 4-14, 16, 20-22, 24-32, 23 and 38-44 were rejected under 35 USC 103(a) as being obvious over Markham ('061) in view of Markham ('053) in view of McClung and Mauldin further in view of Schaefer. This rejection is respectfully traversed.

The primary reference, Markham '061, is cited for meeting the language of independent Claims 1 and 22 except for the recitation that the recess has a "machined edge". The Examiner argues that it would be obvious to modify Markham '061 using features taught by the secondary references, Markham '053, McClung, Mauldin and Schaefer.

Applicants respectfully submit that the references cited, alone or in combination, do not teach the fully-consumable pet chew or the method of making same, as disclosed and claimed herein, for the reasons set forth below.

Markham '061 teaches a pet toy which includes one or more edible treats to induce an animal to play with said pet toy. The pet toy itself comprises a molded body having an outer surface with one or more recesses for removably holding one or more animal treats. As stated in Markham, col. 2, lines 8-10, the pet owner can replenish the treats as often as necessary to maintain the pet's interest in the toy.

The Markham '061 pet toy is not intended to be fully-consumable. It is not made of rawhide or any other consumable material. It is made of a molded plastic material which may be either rigid or flexible (col. 2, line 15) to hold assorted edible pet treats. Furthermore, Markham '061 discloses in col. 7, lines 45-54, that the interiors of the pet toys are hollow, but may be filled with material enabling the pet toy to float, such as Styrofoam®-like material. Clearly, Markham '061's pet chew is not fully-consumable, unlike the edible pet chew of the invention.

Applicants' pet chew is more in the nature of a food item that is fully-consumable, in contrast

to Markham '061's non-edible pet toy which may be refilled with edible treats to induce an animal to play with it and to keep the animal interested in the toy. The pet toy is capable of repeated play value as it is not destroyed as the pet consumes the treat inserted in the toy.

Not only is Markham '061 not intended to be fully-consumable, the reverse is true. To make the Markham '061 pet toy fully-consumable would defeat the purpose of Markham '061 to provide a refillable, re-usable pet toy which maintains a pet's interest in the toy, as set forth in column 2, lines 14-17:

The toy may be made of molded rigid or flexible material which can accommodate different types of treats. This construction allows the toy to be *used repeatedly* by refilling the recesses with more treats. (emphasis added).

Markham '061's discussion of the deficiencies of the prior art in the Background Art section (col. 1, lines 15-55) of the '061 patent supports this critical distinction. In Col. 1, lines 14-24, Markham '061 points out that a shortcoming of prior art chewable pet chews made of rawhide, rubber and plastic is that the animal loses interest in the toy as the flavor and/or odor becomes less strong and no means are provided for subsequently enhancing the flavor and odor of the toy. Thus, one of Markham '061's objectives is to provide a pet toy which maintains a pet's interest and which can be refilled with flavor and odor enhancing treats.

Markham '061 points out an additional shortcoming of prior art treats in col. 1, lines 25-30. These are toys impregnated with odors or flavorings, which toys are not intended to be consumed by the pet. By mistake, pets may consume these toys entirely due to the stimulation these toys provide to the animal, causing the pet to choke or suffer other health consequences. Markham '061 solves this problem by providing the pet with a more tempting choice: consume the edible treats positioned in recesses in the hollow, molded body of the pet toy rather than the inedible, molded pet toy body.

Markham '061 discloses that the treat is releasably and frictionally held in the recess (col. 4, lines 28-29) in the non-edible pet toy. The pet owner can replenish the treats as often as necessary to maintain the pet's interest in the toy. In column 8, lines 10-12, Markham '061 states that since

the pet toy is not destroyed by the removal of the treats, the toy can be reloaded with additional treats or foods for reuse. Since Markham '061 toy is constructed of molded rigid or flexible material, and not rawhide, it allows the toy to be used repeatedly by refilling the recesses with more treats (column 2, lines 14-17).

In contrast, pets substantially consume, destroy or deform Applicants' rawhide pet chew in order to reach the filling in the receptacles, to the point where the chew would be impossible to refill and re-use. Applicants' pet chew cannot be refilled or reused and is limited to a single use. Once the dog extracts and eats the filling, it will have chewed the pet chew to the point that it cannot be refilled. Thus, the chew of the invention has limited play value, in contrast to Markham's which is refillable and reusable and thereby sustains a pet's interest.

It is neither feasible nor permissible to modify the pet toy of Markham '061 by making Markham's pet toy fully-consumable. To do so would contradict Markham '061 and would produce a pet toy which is not refillable and re-usable, assuming it could even be molded to contain the pet treats disclosed by Markham '061.

The Examiner's statement that the Markham '061 toy can be rawhide, rubber or plastic is an inaccurate reading of the reference. That statement is taken from the "Background Art" section of Markham '061 and refers to prior art chewable pet toys, not to Markham '061's invention.

Thus, Markham '061 is lacking the disclosure of a fully consumable pet chew having receptacles for holding fillings, which edible fillings are fixedly positioned in said receptacles, where the fillings are non-releasable and non-replaceable.

The remaining secondary references do not provide the missing teaching of a fully consumable rawhide chew with edible fillings fixedly, non-releasably and non-replaceably positioned in receptacles formed in the chew. The references are directed to non-edible plastic toys which dispense edible pet treats or to non-related art cited for other reasons. They do not disclose fully consumable, non-refillable food items.

Thus, Markham '053 is a continuation of Markham '061, as discussed above. McClung

teaches a method for a person to interact with a pet comprising throwing the pet a plate on which at least one item, which may be a food item, is releasably mounted. The plate may have different shapes, but in any case, is not consumable. Mauldin discloses a non-consumable animal toy made of a non-toxic plastic. Schaefer discloses a rawhide screw anchor plug and is not directed to animals or dog chews.

Claims 3 and 23 are rejected under 35 U.S.C. 103(a) as being obvious over the references as applied to claim 1 above, and further in view of Chill, Venable and Zinder. Claims 15, 17-19, 33 and 35-37 were rejected under 35 U.S.C. 103(a) as being obvious over the references as applied to claim 1 above, and further in view of Perlberg et al. Claims 45 and 46 were rejected under 35 U.S.C. 103(a) as being obvious over the references as applied to claim 22 above, and further in view of Lawson and Axelrod. These rejections are respectfully traversed.

Chill, Venable and Zinder are cited for disclosing notched or roughened surfaces to enhance retention. Perlberg et al. is cited for disclosing providing chewable products with colorants, nutritional supplements and/or drugs. Lawson and Axelrod are cited for disclosing sterilizing and/or drying foods.

At the outset, it is apparent that the shortcomings of the primary Markham '061 reference are necessarily inherent in the further joint consideration of Markham '061 in view of the additional secondary references.

The rejection above based on Markham '061 has already been addressed and is reiterated herein. The addition of the secondary references does not provide the requisite teaching or suggestion to overcome the shortcomings of the primary Markham '061 reference. It is respectfully submitted that even if one were to combine these references, and it is respectfully submitted that one would not be guided to do so, one would still not arrive at the invention of the present claims. Such a combination would still be lacking the disclosure of a fully consumable pet chew as claimed herein. Thus, even when considered in combination, it is apparent that the combination of any one or all of Chill, Venable, Zinder, Perlberg, Lawson and Axelrod with Markham would not provide

the requisite teaching or suggestion to one skilled in the art required to produce applicant's fully-consumable pet chew. Markham '061 does not teach or suggest a fully consumable chew and nothing in the secondary references can overcome such a defect.

Therefore, it is respectfully submitted that Markham '061, Markham '053, McClung, Mauldin, Schaefer, Chill, Venable, Zinder, Perlberg, Lawson and Axelrod, whether taken individually or in combination with themselves and the other patents of record, including Markham '061, do not disclose or suggest the invention as claimed. Accordingly, reconsideration and withdrawal of the rejections is respectfully requested.

Furthermore, the patentability of the subject matter of dependent claims necessarily must hinge upon the patentability of the independent claim from which it depends. As independent claims 1 and 22 are believed to be directed to a novel fully-consumable chew, it is also believed that dependent claims 2-21 and 23-46 are also novel and non-obvious. Accordingly, reconsideration and withdrawal of the present rejections are respectfully requested.

Conclusion

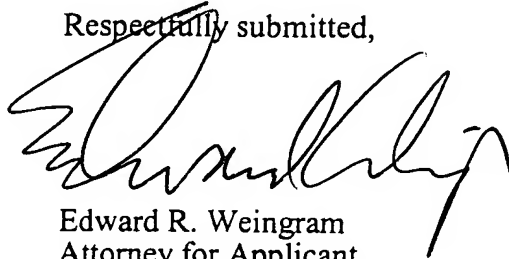
None of the references taken either singularly or in combination show or suggest a fully-consumable chew as taught by applicants.

Accordingly, reconsideration and withdrawal of the rejections is respectfully requested.

In view of the foregoing Amendments to the claims, and further in view of applicants' distinctions and the remarks thereof, it is respectfully submitted that this case is in condition for allowance. Favorable action on the merits, including entry of all requested amendments and allowance of all claims is respectfully solicited.

Dated: 8-3-05

Respectfully submitted,



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